

Vogel Lecture on Legal Ethics and Professionalism

State Bar of North Dakota

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► *Ethical Action: Doing the Right Thing
in Challenging Moments of
Professional Practice*

Two questions:

- ▶ How do the best lawyers bring all of who they are to act ethically in challenging moments of professional practice?
- ▶ How can legal education better prepare future lawyers so that they have the capacity for ethical action?

The answer lies in a lawyer's professional identity.

Being an ethical lawyer is a matter of who one is, as much as a matter of what one knows, or what one is able to do.

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- ▶ A lawyer's professional identity is a deep sense of self in role.
 - ▶ “I am the kind of lawyer who.....”



“I wish my identity weren’t so wrapped up with who I am.”

Why Identity?

- ▶ Reliance on external motivations (rules and incentives) has proven ineffective.
- ▶ Identity relies on intrinsic motivations.

Moral Psychology

- ▶ Sensitivity
- ▶ Judgment
- ▶ Motivation
- ▶ Implementation

Virtues

- ▶ Virtues are character traits that form a healthy identity. They are dispositions and capacities that bring you closer to an ideal.

Six Virtues = Ethical Professional Identity

- ▶ Competence
- ▶ Fidelity to the law
- ▶ Fidelity to the client
- ▶ Public-spiritedness
- ▶ Civility
- ▶ Practical wisdom

Competence

- ▶ *“I am an excellent lawyer, one who has the knowledge, skill, diligence and judgment to assist my clients.”*

Fidelity to the Client

- ▶ *“I am a lawyer who fulfills my duties of utmost good faith and devotion to my client, and I do not permit my personal interests or the interests of others to interfere with those duties.”*

Fidelity to the Law

- ▶ *“I am a lawyer who is faithful to and upholds the law and the institutions of the law.”*

Public-Spiritedness

- ▶ *“I am a lawyer who practices in a spirit of public service. I seek to ensure access to justice and to regulate the legal profession for the benefit of the public. I do my share to ensure access to justice, and I seek to improve the law.”*

Civility

- ▶ *“I am a lawyer who is civil to everyone with whom I come in contact as a lawyer. I am courteous, cooperative, and honest, and I do not engage in abusive tactics.”*

Practical Wisdom

- ▶ *“I am a lawyer who cultivates the practical wisdom that I need in order to deploy my other virtues, both personal and professional, in particular situations in the right amounts, in the right way, and for the right reasons.”*



Example:
Spaulding v. Zimmerman

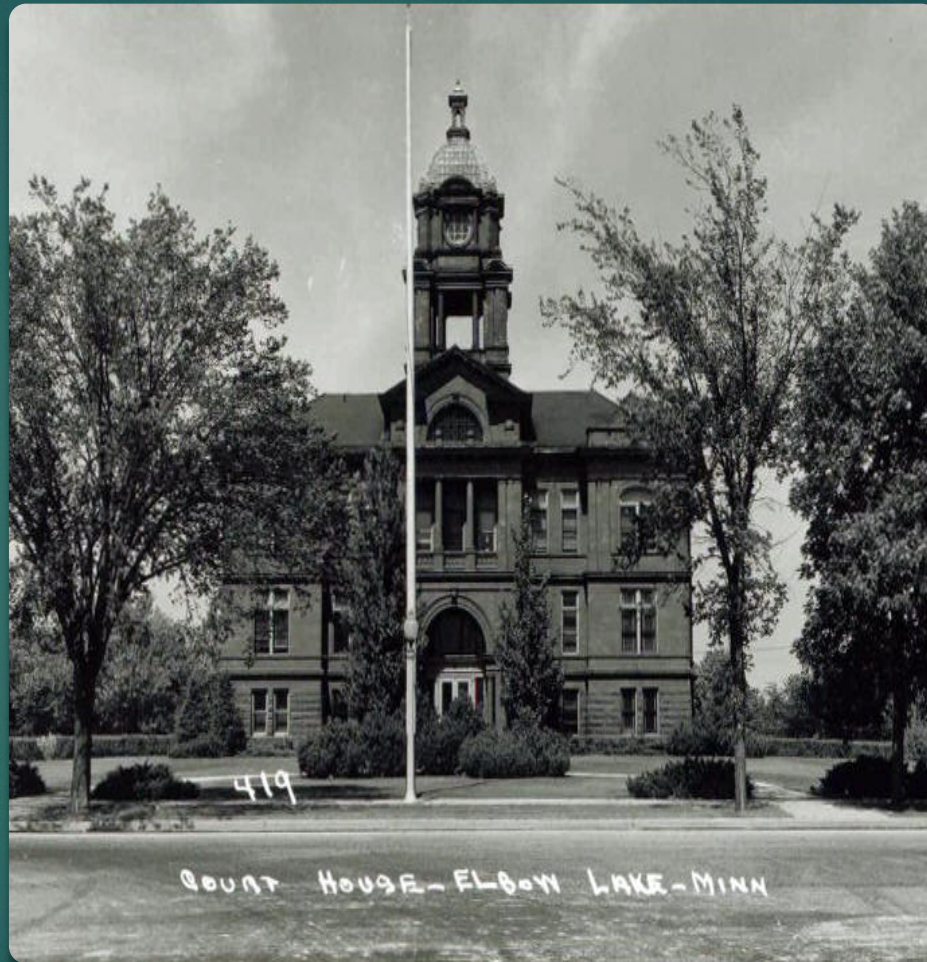












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COUNT HOUSE - ELBOW LAKE - MINN

Doctor to defense lawyer:

“The one feature of the case which bothers me more than any other...is the fact that this boy of 20 years of age has an aneurysm, which means a dilatation of the aorta and the arch of the aorta. Of course an aneurysm or dilatation of the aorta in a boy of this age is a serious matter as far as his life. This aneurysm ...might rupture with further dilatation and this would cause his death.”

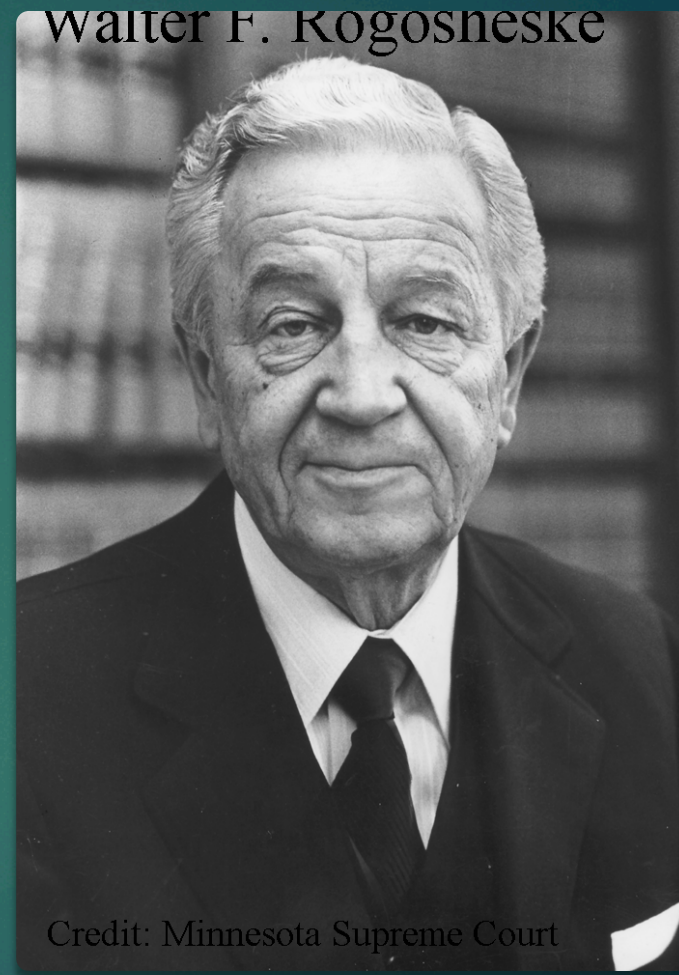


What do you do?

Spaulding v. Zimmerman

- ▶ What did the defense lawyers do?
- ▶ What did the court(s) do?
- ▶ What happened to David Spaulding?

Trial Judge Walter Rogesheske



Justice Thomas Gallagher
Minnesota Supreme Court





Efforts in legal education to cultivate professional identity

- ▶ Courses focused on the development of professional identity
- ▶ Integration of professional identity readings and exercises throughout curriculum
- ▶ Increased externship and clinic opportunities with explicit focus on the development of professional identity
- ▶ Increased pro bono activities in which students are involved in real cases and meet clients

Further readings

- ▶ Longan, Floyd, and Floyd, *The Formation of Professional Identity: The Path from Student to Lawyer*, Routledge Press, forthcoming October 2019
- ▶ Floyd and Gallagher, *Legal Ethics, Narrative, and Professional Identity: The Story of David Spaulding*, 59 Mercer L. Rev. 941 (2008).

THE END